

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHELLI CALDWELL,

Plaintiff,

v.

KENNETH BROWN, *et al.*,

Defendants.

No. C09-1332RSL

ORDER GRANTING KINGSLEY'S
MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on “Defendant Kingsley’s FRCP 12(b)(6) Motion and/or Motion for Summary Judgment.” Dkt. # 50. Defendant Jean Kingsley seeks dismissal of all of the claims asserted against her and her husband. Having reviewed the timely memoranda, declarations, and exhibits submitted by the parties and having heard the arguments of counsel,¹ the Court finds as follows:

A. DUE PROCESS CLAIMS

For the reasons set forth in the Court’s Order Granting City Defendants’ Motion for Summary Judgment, of even date, the relationship between plaintiffs Shelli Caldwell and her grandson, ZA, as of August 6, 2008, was not that of *de facto* parent under Washington law and

¹ Because matters outside the pleadings were presented by the parties, the motion will be treated as one for summary judgment under Fed. R. Civ. P. 56. The Court has not considered the reply memorandum submitted by defendant Kingsley on June 17, 2010, or the sur-reply submitted by plaintiffs on June 23, 2010. Both documents were untimely filed.

1 was not entitled to protection under the Due Process Clause. Defendant Kingsley's role in
2 transferring custody of ZA from Ms. Caldwell to his paternal grandmother did not, therefore,
3 interfere with a liberty interest protected by the United States Constitution.

4 **B. UNLAWFUL SEIZURE CLAIMS**

5 Plaintiffs allege that defendant Kingsley is liable for unlawful arrest or seizure
6 because she acted in concert with the police officers who arrested Ms. Caldwell and seized ZA.
7 As discussed in the Order Granting City Defendants' Motion for Summary Judgment, plaintiffs
8 have not shown that taking control of ZA in order to effectuate a valid court order was unlawful
9 or otherwise violated ZA's Fourth Amendment rights. Nor have plaintiffs raised a genuine issue
10 of fact regarding the existence of probable cause to arrest Ms. Caldwell. Thus, even if the Court
11 assumes that defendant Kingsley acted in concert with the defendant officers, their joint action
12 did not violate plaintiffs' Fourth Amendment rights.

13 Plaintiffs also argue that the manner in which defendants seized custody of ZA –
14 “at his mother's funeral” – violated ZA's civil rights. Response at 10. To determine the
15 constitutionality of a seizure, courts must balance the nature and quality of the intrusion against
16 the importance of the governmental interest served. Tennessee v. Garner, 471 U.S. 1, 8 (1985).
17 The balancing exercise requires consideration of the particular facts presented: abstract
18 discussions of the importance of a governmental interest or the nature of the intrusion will not
19 suffice. The Supreme Court has held that subjecting a suspect to surgery under general
20 anesthesia to obtain evidence is unreasonable (Winston v. Lee, 470 U.S. 753 (1985)), whereas
21 taking fingernail scrapings for the same purpose is reasonable (Cupp v. Murphy, 412 U.S. 291
22 (1973)). An unannounced entry into a home is reasonable to prevent the destruction of evidence
23 (Ker v. California, 374 U.S. 23 (1963)), but not to conduct a search for illegal narcotics (Jacobs
24 v. City of Chicago, 215 F.3d 758, 770 (7th Cir. 2000)). Plaintiffs make no effort to identify,
25 much less balance, the competing interests in this case. The Court has already found that the
26 seizure of ZA incident to a transfer of custody pursuant to court order was reasonable under the

1 Fourth Amendment. The fact that this seizure occurred at or immediately after his mother's
2 funeral, while unfortunate, was not unreasonable given the circumstances. The officers believed
3 that ZA was being hidden from his paternal grandmother. His anticipated presence at his
4 mother's funeral provided an opportunity to serve the custody order. Defendants allowed ZA to
5 attend the funeral unmolested: it was only after the service was completed that defendant
6 Kingsley served the custody order. In addition, the seizure was of short duration and consisted
7 primarily of Officer Felmey catching ZA as he ran and delivering him to his paternal
8 grandmother. Given the governmental interest in executing court orders (especially when those
9 orders concern child welfare issues), the timing and manner in which ZA was seized were not
10 unreasonable.

11 **C. RCW 4.24.510**

12 Defendant argues that she is immune from civil liability for all claims arising from
13 her communications with the Bellingham Police Department under RCW 4.24.510. State law
14 may not, however, immunize government conduct that is otherwise subject to 42 U.S.C. § 1983.
15 See, e.g., Felder v. Casey, 487 U.S. 131, 139 (1988). Defendant's request for fees and expenses
16 under RCW 4.24.510 is denied.

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18 For all of the foregoing reasons, plaintiffs' claims against defendant Kingsley and
19 her husband are DISMISSED.

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21 Dated this 3rd day of September, 2010.

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23 

24 Robert S. Lasnik
25 United States District Judge
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